

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAVERE D. LEE-BRYANT,

Defendant-Appellant.

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UNPUBLISHED

April 15, 2003

No. 238182

Wayne Circuit Court

LC No. 01-003908-01

Before: Meter, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to commit great bodily harm less than murder, MCL 750.84. The trial court sentenced defendant to four to ten years' imprisonment. He appeals as of right. We affirm.

**I. Background Facts**

April Harris testified that she was walking along Joy Road in the city of Detroit at approximately three o'clock in the morning on February 5, 2001. Ms. Harris stated that she was homeless and acknowledged that she engaged in prostitution on occasion. According to Ms. Harris, defendant drove up to her in a burgundy Crown Victoria. She spoke with him through the passenger window. After they agreed upon a price of twenty dollars, Ms. Harris stepped into the vehicle and told defendant to drive up the street and pull the vehicle over.

After defendant parked the vehicle, Ms. Harris alleged that he gave her two dollars instead of the twenty. As she was preparing to leave, Ms. Harris observed defendant pull out a large butcher knife. She testified that that defendant made several attempts to stab her and that they struggled in the car. Ms. Harris opined that the multiple coats she was wearing provided some protection from defendant's knife. She testified that defendant pulled her red coat off while she was escaping from the vehicle. Ms. Harris ran across the street to a friend's home. She then realized that she had been stabbed in the back of the neck.

When police officer Brian Franz arrived at the scene at 3:55 a.m., he observed that Ms. Harris had a puncture wound at the base of her neck. He further testified that Ms. Harris did not appear to be on drugs or otherwise intoxicated. Ms. Harris described her attacker to police as being light-skinned, approximately twenty-four years of age, 5'6" tall, and weighing 175 pounds. Officer Franz stated that Ms. Harris did not say anything to him regarding a coat nor did she

mention that she engaged in prostitution. Rather, Ms. Harris told him that she was walking home and accepted a ride with defendant.

An ambulance subsequently took Ms. Harris to the hospital. Dr. Gregory Hayes testified that Ms. Harris was seen in the emergency room at 4:23 a.m.<sup>1</sup> According to the medical records, Ms. Harris sustained a cut to the back of her neck that was approximately 1 inch wide and 1-1/2 inches deep. Dr. Hayes described Ms. Harris' wound as a stab wound and stated that there were no other injuries reported in the medical record. A blood test given to Ms. Harris at 4:39 a.m. tested negative for alcohol.<sup>2</sup> The wound on Ms. Harris' neck ultimately required nine staples.

Approximately one month after the incident, Ms. Harris testified that she saw defendant in a burgundy Crown Victoria at a local gas station. Ms. Harris recorded the license plate number of the car and phoned the police. On March 12, 2001, Ms. Harris identified defendant as her attacker in a police line-up. At the time of the line-up, defendant was twenty-two years of age, 5'8" tall, and weighed 200 pounds. Officer Jason Marzette testified that there was a 1992 burgundy Ford Crown Victoria registered in defendant's name.

## II. Sufficiency of the Evidence

Defendant initially asserts that there was insufficient evidence to sustain his assault with intent to do great bodily harm conviction. We disagree.

In reviewing a sufficiency of the evidence claim, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). "[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

### A. Identity

Defendant argues that Ms. Harris was the only witness to identify him as the attacker. According to defendant, Ms. Harris' testimony was extremely speculative. Defendant notes that Ms. Harris identified him as the attacker weeks after the incident; that she saw other individuals who she thought looked like her attacker; and that she was not sure defendant was her attacker at first glance. Defendant also questions Ms. Harris' reliability given her admitted use of drugs and alcohol during the time period surrounding her alleged attack. According to defendant, Ms. Harris' impaired cognitive abilities affected her memory of the incident as evidenced by her inconsistent testimony.

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<sup>1</sup> Dr. Hayes could not recall personally treating Ms. Harris. He initially testified that the resident he was supervising could have seen Ms. Harris. However, he later concluded that he must have evaluated Ms. Harris because the medical records indicated that she was seen in the level one trauma room.

<sup>2</sup> Ms. Harris testified that she drank a beer earlier in the evening but denied taking any drugs on the day she was attacked.

The trial court agreed that identification was a key issue in this case. In reaching its verdict, the trial court stated:

The testimony of the complainant in this matter does contain some discrepancies, but under the circumstances of this incident, it is reasonable to expect that there would be some discrepancies. And as a matter of fact, the discrepancies in my opinion go to bolster the credibility of that witness' testimony.

Ms. Harris is a very believable person in her testimony, and the Court accepts the version that she related to the Court. That version is supported by the other evidence that has been submitted to this case.

Case law clearly states that issues of witness credibility are for the trier of fact to decide and will not be resolved anew on appeal. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999); *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997). Accordingly, we defer to the trial court's finding that Ms. Harris was a credible witness.<sup>3</sup>

Ms. Harris' description of her attacker to the police was similar to defendant's appearance when he was arrested. Moreover, Ms. Harris claimed that her attacker drove a burgundy Crown Victoria. The record shows that a 1992 burgundy Crown Victoria was registered in defendant's name. Ms. Harris also identified defendant in a police line-up as the individual who stabbed her. Accordingly, we find that the trial court could reasonably conclude that defendant was the individual who attacked Ms. Harris.

#### B. Assault & Intent

Defendant further contends that there was insufficient evidence that he assaulted Ms. Harris with the intent to commit great bodily harm. Assault with intent to do great bodily harm is a specific intent crime. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). A conviction for this assault crime requires proof of: "(1) an assault, i.e., 'an attempt or offer with force and violence to do corporal [sic] hurt to another' coupled with (2) a specific intent to do great bodily harm less than murder." *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996), quoting *People v Smith*, 217 Mich 669, 673; 187 NW 304 (1922). The intent to commit great bodily harm can be inferred from an individual's conduct. *Parcha*, *supra* at 239.

Defendant's argument again revolves around his contention that Ms. Harris' testimony lacked credibility. He suggests that Ms. Harris, in a drug-induced and intoxicated condition, may have actually been the attacker and that defendant acted in self-defense. He also contends that

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<sup>3</sup> Defendant's argument that Ms. Harris was under the influence of drugs and alcohol at the time of the offense is also not supported by the evidence. Ms. Harris' blood test, taken shortly after the incident, showed no evidence of alcohol in her system. Further, the police officer that responded to the scene testified that she did not appear to be under the influence of drugs or alcohol.

the complaint did not display any fear when she stepped into the vehicle with a complete stranger. Defendant further opines that there is no evidence that he stabbed Ms. Harris with the specific intent to cause her great bodily harm.

Again, questions of witness credibility are for the trier of fact to decide. *Avant, supra* at 506. The testimony reflects that defendant pulled out a large butcher knife after Ms. Harris entered his vehicle. When defendant produced this knife, Ms. Harris began screaming and fought to protect herself from defendant's *repeated* stabbing attempts. Eventually, Ms. Harris evaded defendant's attack by running to a friend's home. As a result of defendant's actions, Ms. Harris sustained a puncture wound to the base of her neck that ultimately required nine staples. The trial court, as the fact-finder in this case, could find from this evidence that defendant assaulted Ms. Harris with the intent to inflict great bodily harm.

### III. Effective Assistance of Counsel

Defendant next claims that his counsel was ineffective for failing to pursue defendant's alibi defense. Because defendant did not raise this argument before the trial court, our review is limited to error apparent on the record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). Unpreserved error only warrants reversal when it is plain error affecting a defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Effective assistance of counsel is presumed and defendant bears a heavy burden to prove otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). To establish ineffective assistance of counsel, defendant must prove: (1) that his counsel's performance was so deficient that he was denied his Sixth Amendment right to counsel, and he must overcome the strong presumption that counsel's performance was sound trial strategy; and (2) that this deficient performance prejudiced him to the extent there is a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001).

After a careful review of the record, we find no evidence that defense counsel was constitutionally ineffective. Defendant contends that there is no evidence that defense counsel pursued his alleged alibi defense. However, there is also nothing in the record to indicate that defense counsel ignored this portion of defendant's defense.<sup>4</sup> "Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy." *Rockey, supra* at 76. This Court will not second-guess defense counsel regarding matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). Absent record evidence that defense counsel inexplicably neglected to contact vital alibi witnesses, we find no plain error. Cf *People v Bass*, 247 Mich App 385; 636 NW2d 781 (2001). While in hindsight defense counsel's ultimate strategy may have proven unsuccessful, this does

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<sup>4</sup> We note that prior to the start of trial, defendant filed a grievance against defense counsel for failing to visit or return his phone calls. However, defendant withdrew the complaint after discussing the case with defense counsel.

not mandate a conclusion that counsel rendered ineffective assistance. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996).

Affirmed.

/s/ Patrick M. Meter  
/s/ Mark J. Cavanagh  
/s/ Jessica R. Cooper